

The sole issue in this post-award proceeding is whether the claimant is entitled to additional medical treatment. The claimant seeks bilateral total knee replacements and contends that such surgeries are causally related to the injury he sustained on March 23, 1998.

The respondent contends that the need for bilateral total knee replacements is unrelated to the injury the claimant sustained on March 23, 1998, and notes the medical evidence supports the Administrative Law Judge's denial of additional medical treatment.

FINDINGS OF FACT & CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, and the stipulations of the parties, the Board makes the following findings of fact and conclusions of law:

On March 23, 1998, the claimant slipped and twisted his left knee while retrieving a traffic barricade which had fallen into a hole. On May 21, 1998, following a course of conservative treatment, Dr. Jansson performed an arthroscopic meniscal repair and debridement on the left knee. As a result of the March 23, 1998 injury, the claimant also complained of pain in his right knee, low back and left hip.

The claim was litigated and on April 19, 2000, an Award of a 55.75 percent work disability was entered for the claimant. As the Administrative Law Judge noted during the post-award proceeding, there were minimal findings in the award regarding the extent of claimant's injuries and no specific finding of a percentage of functional impairment. On August 31, 2000, the claimant filed the instant request seeking authorization for bilateral total knee replacement surgeries.

The claimant had preexisting problems with his left knee. In 1981 he had a left patellectomy, removal of his kneecap, complicated by some soft tissue problems. While the underlying claim was being litigated, the claimant testified that he had obtained medical opinions that he needed bilateral total knee replacements. Dr. Jansson was still providing follow-up treatment from the arthroscopic surgery and when informed by claimant of those recommendations, noted that he did not understand how the need for total knee replacement would have been related to such a minor work injury. Nonetheless, Dr. Jansson referred the claimant to Dr. Schurman for an opinion regarding total knee replacement surgeries. Dr. Jansson testified that following Dr. Schurman's recommendation, the claimant had elected to postpone such procedures.

The claimant testified that the continued pain in both knees and hip had lead him to request the surgeries.

At the post-award proceeding held on October 10, 2000, the claimant sought authorization for bilateral total knee replacements. It was noted during the hearing that surgery for the right knee was tentatively scheduled with Dr. Schurman on November 16, 2000. After the post-award hearing and before the Administrative Law Judge's decision, Dr. Schurman performed a total knee replacement on claimant's right knee.

An injured employee is entitled to additional medical care if the administrative law judge determines such care is necessary to cure or relieve the effects of the accidental injury which was the subject of the underlying award.¹

Herein, both Drs. Jansson and Schurman provided opinions regarding the relationship between the March 23, 1998 work-related injury, and the requested bilateral total knee replacement surgeries.

Both Drs. Jansson and Schurman testified that the condition in claimant's right knee is not related to the injury he sustained on March 23, 1998. Dr. Jansson noted that there was no correlation between the injury to the left knee and the need for a total replacement of the right knee. Dr. Schurman also noted that the right knee was a separate issue. Dr. Schurman related the right knee problems to osteoarthritis. Dr. Schurman specifically testified:

Q. In your opinion, within a reasonable degree of medical probability -- strike that. Are you aware that this person walked with an altered gait and/or a limp for a considerable period of time and had a brace from approximately his ankle up to his thigh on his left leg?

Mr. Liby: What time frame are you talking about?

Mr. Zongker: Following the accident up to -- well, he's had it every time I've seen him, up to the time of this hearing anyway.

A. He's probably walked with an altered gait ever since his kneecap was removed.

Q. Would that have any effect upon his right knee?

A. His right knee -- the diagnosis on his right knee is osteoarthritis, I think it's independent of what's going on in his opposite side.²

In addition, during the original litigation of this matter, Dr. Mills also testified that the need for a total replacement on the right was unrelated to the work-related injury of March 23, 1998. The Board concludes that the claimant has failed to meet his burden of proof to establish that the total knee replacement on the right is causally related to the injury the claimant sustained on March 23, 1998.

¹K.S.A. 44-510k.

² Deposition of John Schurman, M.D., December 19, 2000; p.8.

As previously noted, after the March 23, 1998 injury Dr. Jansson performed arthroscopic surgery on the claimant's left knee. It was Dr. Jansson's opinion that because of the claimant's longstanding problems with his left knee it was likely that he would need a total knee replacement irrespective of the work-related injury. Dr. Jansson further opined that the work-related injury did not cause, aggravate or accelerate the need for a total replacement of the claimant's left knee.

Conversely, Dr. Schurman opined the March 23, 1998 injury and resultant arthroscopic surgery aggravated the preexisting osteoarthritic condition in the claimant's left knee. Dr. Schurman concluded the work-related injury probably was an aggravating factor in the need for a total replacement of the claimant's left knee.

The claimant was able to perform strenuous job duties that required significant squatting, bending, and climbing ladders before the injury. After the injury the claimant was unable to return to those activities. In the original proceedings in this matter, claimant testified that following the arthroscopic surgery he did not obtain any relief and noted increased pain, locking and popping sounds in his left knee. Drs. Murati and Mills concluded that claimant needed a total replacement of the left knee and both doctors opined that there was a causal relationship between the claimant's complaints and the injury of March 23, 1998, which aggravated or accelerated the preexisting arthritic condition of claimant's left knee.

The preponderance of the medical evidence supports a determination that the claimant's preexisting osteoarthritis condition in his left knee was aggravated and accelerated by the work-related injury on March 23, 1998.

Although the claimant instituted this proceeding to obtain authorization for bilateral total knee replacements, the evidence does not support a determination that the need for a total knee replacement on the right was causally related to the March 23, 1998, injury to the claimant's left knee. The claimant proceeded with the surgical total knee replacement on the right while the decision in this post-award proceeding was pending before the Administrative Law Judge.

As a result of the total knee replacement on the right, there is no evidence in the record that claimant currently needs the total knee replacement on the left.

Dr. Schurman testified:

Q. About how long will you wait until the recovery from the right before you would approach doing the left?

A. If he recovers satisfactorily, I would imagine that his right knee will soon take over as his good knee. If that provides him with sufficient relief of pain and functional return that he could be functional, his knee replacement on

the left could be postponed indefinitely. If on the other hand his left knee becomes limiting or continues to be painful such that he wants to have it fixed, we would fix it based on his request.³

The claimant's request for a total knee replacement on the left is premature. The sole evidence provided at the post-award proceeding was that such surgery may now be postponed indefinitely. Accordingly, if the medical situation changes and the left knee becomes limiting or continues to be painful, the claimant can at that time apply for additional medical treatment. Absent any intervening accidents and upon a determination that such surgery is necessary to cure or relieve the effects of the work-related injury authorization for such treatment could be addressed. The record does support a finding that claimant's left knee is symptomatic and conservative treatment is ordered with Dr. Schurman.

The Administrative Law Judge's Award is affirmed in part and reversed in part. The finding that the need for a total knee replacement on the right is not causally related to the work-related injury of March 23, 1998, is affirmed. The finding that the need for a total knee replacement on the left is not causally related to the work-related injury of March 23, 1998, is reversed, however, the evidentiary record does not support a finding that there is a present need for a total knee replacement on the left.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that Administrative Law Judge Jon L. Frobish's Award for Post-Award Medical dated February 21, 2001, is affirmed in part and reversed in part in accordance with the foregoing findings.

IT IS SO ORDERED.

Dated this _____ day of May 2001.

BOARD MEMBER

BOARD MEMBER

³ Deposition of John Schurman, M.D., December, 19, 2000; p.6.

BOARD MEMBER

pc: James B. Zongker, Attorney for claimant, Wichita, Kansas
Richard J. Liby, Attorney for respondent, Wichita, Kansas
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Workers Compensation Director